

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION ADMINISTRATION

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Laws 2010, Ch. 287, § 18. (See the text of § 18 on page 59.) The Governor's Office authorized the notice to proceed through the rulemaking process on November 16, 2010.

[R10-184]

PREAMBLE

1. Sections Affected

Article 6
R17-1-601
R17-1-602
R17-1-603
R17-1-604
R17-1-605
R17-1-606
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R17-1-610

Rulemaking Action

New Article
New Section
New Section
New Section
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New Section
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-331, 28-363, and 41-791(B)(3)(a)(i)

3. A list of all previous notices appearing in the *Register* addressing the proposed rules:

Notice of Rulemaking Docket Opening: 16 A.A.R. 2520, December 31, 2010

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: John Lindley, Administrative Rules Analyst
Address: Administrative Rules Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 517M
Phoenix, AZ 85007
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Written comments regarding this rulemaking or the accuracy of the Department's economic, small business, and consumer impact statement may be submitted to the analyst listed above until the close of public record at 5:00 p.m. on February 22, 2011. Comments are accepted Monday through Friday, 8:00 a.m. to 5:00 p.m., with the exception of state holidays. Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/MVD/MVDrules/index.asp.

5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:

The Arizona Department of Transportation proposes to adopt rules that provide formal guidelines for all solicitation activities sought to be conducted on Department property. Although similar solicitation guidelines are set forth in rules promulgated by the Arizona Department of Administration, ADOT buildings are not subject to the ADOA regulations as provided under A.R.S. § 41-791(B)(3)(a)(i). The Department's need for its own rules on this subject is therefore immediate, due to a sharp increase in the number of requests received from persons and organizations seeking permission to conduct solicitations at high volume Motor Vehicle Division Customer Service offices located throughout the state, as well as a corresponding increase in the number of complaints the Department has received about the intrusive nature of these solicitation activities and their propensity to disrupt and unreasonably delay the business activities of the Department and its customers.

6. A reference to any study relevant to the rules that the agency reviewed and proposes to either rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not review or rely on any study for this rulemaking.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The proposed rules will prohibit solicitation activities that involve the collection of monetary contributions or the exchange of money for goods or services on Department property. ADOT has determined that a complete ban of this particular form of solicitation activity is necessary because it is the most disruptive to the Department's regular business operations and places its customers at too great a risk of fraud and/or theft.

The anticipated economic impact to the various organizations no longer permitted to conduct solicitation activities involving the collection of monetary contributions or the exchange of money for goods or services on Department property will vary greatly depending on the type of organization. The Department anticipates that some of the solicitation organizations affected by the proposed rules may temporarily experience a minimal to moderate economic impact due their loss of potential sales or contributions while having to seek an alternative venue. The activities prohibited under these rules will have no economic impact to signature gatherers for political petitions or any state authorized or sponsored employee programs.

The Department anticipates that consumers of Department products and services in many communities will experience an un-quantifiable benefit from the additional controls and protections the proposed rules will provide, which should ensure that consumers are not inundated by solicitors each time they need to enter or exit a Department building to accomplish personal business.

The anticipated economic impact to the solicitors who remain eligible to apply for a solicitation permit will be minimal, and will include the costs involved with completing the application process; providing the Department with copies of all solicitation materials; and supplying the appropriate equipment for solicitation activities.

The anticipated economic impact to the Department should be moderate and results from having to provide the resources necessary for rulemaking; administrative costs involved with reviewing, approving, or denying solicitation requests; making appropriate notifications; and conducting administrative hearings when applicable. However, the Department expects to benefit substantially by reducing the number of approved solicitors and the amount of resources necessary for the Department's Office of Inspector General to investigate the numerous solicitation-related complaints that are currently being made on a regular basis by Department customers and employees. The proposed rules should also provide much needed relief to individual office supervisors and other Department staff, who now have to expend valuable time away from their regular duties in order to mediate interactions between solicitors and Department customers, which may contribute to longer customer wait times as well.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Written comments regarding the accuracy of the economic, small business, and consumer impact statement may be submitted to the Department as provided under item 4.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

No oral proceeding is scheduled for this rulemaking. A request for an oral proceeding may be made to the agency official listed under item 4. If no oral proceeding is requested, the public record for this rulemaking will close at 5:00 p.m. on February 22, 2011.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION**

ARTICLE 6. SOLICITATION

Section

<u>R17-1-601.</u>	<u>Definitions</u>
<u>R17-1-602.</u>	<u>Applicability; Exemptions</u>
<u>R17-1-603.</u>	<u>Application for Permit</u>
<u>R17-1-604.</u>	<u>Application Processing; Time-frames</u>
<u>R17-1-605.</u>	<u>Permit Limitations</u>
<u>R17-1-606.</u>	<u>Permit Issuance; Denial; Appeal; Hearing</u>
<u>R17-1-607.</u>	<u>Solicitor Responsibilities; Prohibited Activities</u>
<u>R17-1-608.</u>	<u>Signage Requirements</u>
<u>R17-1-609.</u>	<u>Removal; Revocation; Appeal; Hearing</u>
<u>R17-1-610.</u>	<u>Assumption of the Risk</u>

ARTICLE 6. SOLICITATION

R17-1-601. Definitions

The following terms and phrases apply to this Article, unless otherwise specified:

“Animal guide or service animal” means an animal that:

Completes a formal training program.

Assists its owner in one or more daily living tasks associated with a productive lifestyle, and

Is trained to not pose a danger to the health and safety of the general public.

“Application” means a Solicitation Request form completed, and submitted to the Director’s Office, by a person seeking to conduct a solicitation on Department property.

“Department” means the Arizona Department of Transportation.

“Department property” means real property and buildings under the jurisdiction of the Director, excluding a highway, highway right-of-way, excess right-of-way, property leased by the Department to a third party, and any sidewalk or paved area along the street frontage of the property that is not physically distinguishable from an adjacent municipal or other public sidewalk.

“Director” means the Director of the Arizona Department of Transportation or the Director’s designee.

“Excess right-of-way” means real property under the jurisdiction of the Director that is:

Determined by the Director to be no longer needed or used for transportation purposes, and

Held by the Department for disposition under the provisions of A.R.S. § 28-7095.

“Permit” means the original application form once signed by the Director as authorization for the solicitor to conduct the stated solicitation.

“Person” has the meaning prescribed under A.R.S. § 1-215.

“Solicitation” means any activity, except an activity prohibited under R17-1-607(B)(3) and (4), that can be interpreted as being for the distribution of information or the promotion of causes or memberships.

“Solicitation area” means a location outside a building on Department property, which may be designated by an office supervisor or the office supervisor’s designee for solicitation activities without interfering with business operations, blocking entry or exit doors, or inhibiting pathways to or from the building.

“Solicitation material” means advertising circulars, flyers, handbills, leaflets, petitions, or other printed information.

“Solicitor” means a person conducting a solicitation or the person’s agent.

“Work site” means a location within a building on Department property where public employees or officers conduct

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the daily business of the Department. An office supervisor may designate a cafeteria or break room as a work site where appropriate.

R17-1-602. Applicability; Exemptions

- A.** This Article does not apply to any state authorized or sponsored employee programs including, but not limited to, the following:
1. The State Deferred Compensation Program.
 2. The State Employees Charitable Campaign.
 3. The U.S. Savings Bond Drive.
 4. The United Blood Services Blood Drive.
 5. The Capitol Rideshare Commuter Club.
 6. The Capitol Rideshare Clean Air Campaign.
 7. The Employee Wellness Program.
 8. The employee recognition programs of the Department, or
 9. Any other state program expressly exempted by the Arizona Department of Administration under A.A.C. R2-11-309(A).
- B.** Arizona Department of Administration recognized employee associations composed principally of employees of state government agencies are eligible to apply under this Article for a permit to conduct a solicitation or collect membership fees at a Department work site. Arizona Department of Administration recognized employee associations are exempt, as applicable, from the requirements provided under R17-1-607 and R17-1-608.

R17-1-603. Application for Permit

- A.** A person seeking to conduct a solicitation on Department property shall first apply to the Director's Office for a permit by completing a Solicitation Request form provided by the Department.
- B.** The person shall submit the completed Solicitation Request form by fax or by mail to the address provided on the form at least 15 days before the desired date of the solicitation.
- C.** A completed application is one that is legible and contains, at a minimum, all of the following information:
1. The name, address, and telephone number of the applicant. If a permit is requested on behalf of an organization, the application shall also include the name, address, and telephone number of the organization, as well as its primary representative or contact person deemed in charge of and responsible for the proposed solicitation;
 2. The proposed date and approximate starting and concluding times of the proposed solicitation;
 3. The names of all persons who will take part in conducting solicitation activities on behalf of the applicant;
 4. The specific office location requested for the proposed solicitation;
 5. The general purpose of the proposed solicitation;
 6. Copies of all solicitation materials to be used;
 7. Certification by the applicant that the applicant, and any person acting on behalf of the applicant, has not been convicted of a felony or misdemeanor offense involving dishonesty, fraud, theft or assaultive conduct within five years of the date of the application; and
 8. The signature of the applicant acknowledging that the applicant has read, understands, and agrees to:
 - a. Comply with all requirements under this Article, and
 - b. Assume all legal liability and financial responsibility for the solicitation activity as provided under R17-1-610.
- D.** The Department, to the extent necessary and as appropriate to the time, place, and manner of each proposed solicitation and the safety issues it may pose, may require an applicant to provide at the applicant's own expense:
1. Adequate liability insurance coverage in the form of a certificate of insurance listing the state of Arizona and the Arizona Department of Transportation as additional insured entities, and
 2. Adequate security services during solicitation activities.
- E.** The Department shall consider the following criteria in determining whether one or more of the actions in subsection (D) is necessary and in the best interest of the state:
1. Previous experience with similar solicitation activities.
 2. Risk data.
 3. Security services required for similar solicitation activities in Arizona and the cost of those services, and
 4. The applicant's ability to pay an insurance premium or security service provider.

R17-1-604. Application Processing; Time-frames

- A.** The Department shall not process an application for a permit until the applicant has fully complied with the application requirements under R17-1-603.
- B.** The Department shall provide notice to the applicant that the application is either complete or incomplete within five business days of receiving the application:
1. If the application is complete, the notice to the applicant shall indicate the date the Department stamped the complete application as received; or

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2. If the application is incomplete, the notice to the applicant shall indicate the current date and include an itemized list of all missing information the Department requires of the applicant before the application can be processed.
- C. An applicant with an incomplete application shall respond to the notice provided by the Department under subsection (B)(2) within 10 days after the date indicated on the notice.
 1. The Department may deny the permit if the applicant fails to provide all required information within 10 days after the date of the notice.
 2. On receipt of all required information, the Department shall provide to the applicant the notice prescribed under subsection (B)(1).
- D. The Director shall render a permit decision within 10 business days after the date a complete application is received. The date of receipt is the date on the notice provided by the Department to the applicant under subsection (B)(1) acknowledging receipt of the complete application.
- E. For the purpose of A.R.S. § 41-1073, the Department establishes the following permit time-frames:
 1. Administrative completeness review time-frame: five business days.
 2. Substantive review time-frame: 10 business days.
 3. Overall time-frame: 15 business days.

R17-1-605. Permit Limitations

- A. The Director may approve and issue a solicitation permit under this Article on a first come, first served, basis no earlier than 60 days before the proposed solicitation.
- B. A permit holder may conduct a solicitation only as authorized by the Director under this Article, and only:
 1. At the approved location designated on the permit,
 2. Between the hours of 9:00 a.m. and 4:00 p.m., and
 3. On a day the approved location is open for regular business.
- C. A maximum of three solicitations may be conducted at any one approved location.
- D. A maximum of two solicitor representatives named on the permit may conduct solicitation activities on behalf of the permit-holder at any one approved location, unless extenuating circumstances exist and advance written permission to exceed this limitation is granted by the Director.

R17-1-606. Permit Issuance; Denial; Appeal; Hearing

- A. If the Director approves an application for a solicitation permit, the permit:
 1. Shall expire after the approved solicitation time-period specified on the permit, unless previously revoked;
 2. Shall not be valid for more than 90 days from the effective date approved by the Director;
 3. Shall not be transferred or assigned, in whole or in part, to any person other than the person or organization to whom the permit is issued; and
 4. May be renewed only upon submission of a new application.
- B. The Director may deny an application for a permit for one or more of the following reasons:
 1. The solicitation is likely to:
 - a. Interfere with the work of an employee or daily business of the Department;
 - b. Create an unreasonable risk of injury to a person or risk of damage to property; or
 - c. Conflict with the time, place, manner, or duration of another solicitation for which a permit is already issued or pending;
 2. The applicant or the solicitation activity fails to comply with the requirements of this Article or any other applicable rule or statute;
 3. The applicant, or the person or organization on whose behalf the application was made, has:
 - a. Within 12 months of the date of application, had a previous solicitation permit revoked by the Department for non-compliance with a provision of this Article or any other applicable rule or statute; or
 - b. Within five years of the date of application, on three separate occasions, had a previous solicitation permit revoked by the Department for non-compliance with a provision of this Article or any other applicable rule or statute.
- C. If the Director denies an application for a solicitation permit, the Department shall send written notification of the Director's decision to the mailing address listed on the applicant's permit application, within three business days of denying the permit. The written notification shall state:
 1. The Department's reason for the denial, citing all applicable supporting statutes or rules;
 2. The applicant's right to request a hearing to appeal the Department's action under A.R.S. Title 41, Chapter 6, Article 6, and Article 5 of this Chapter; and
 3. The time-frame for requesting a hearing with the Department's Executive Hearing Office as prescribed under Article 5 of this Chapter.
- D. The scope of the hearing shall be limited to a determination of whether the Department possessed grounds to deny the solicitor's permit under subsection (B).

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R17-1-607. Solicitor Responsibilities; Prohibited Activities

- A.** After receiving express written permission from the Director for a solicitation on Department property, an approved solicitor shall:
1. Provide a table to be used for all authorized solicitation activity;
 2. Present the original, approved Solicitation Request form, without any modifications or alterations, to an office supervisor at the approved location for inspection and sign-in prior to setting up a table or distributing materials;
 3. Provide at least one form of photo identification to an office supervisor for each person participating in or conducting solicitation activities on behalf of the permit-holder;
 4. Maintain a copy of the approved Solicitation Request form at each authorized location at all times;
 5. Set-up a table only in the solicitation area;
 6. Remain at the table in the solicitation area while performing any solicitation activity;
 7. Ensure that no entry or exit doors are blocked at any time;
 8. Ensure that no solicitation activity interferes with building access or egress;
 9. Ensure that no solicitation activity interferes with Department operations; and
 10. Ensure that all solicitors employed by, or acting on behalf of, the permit-holder display a name badge that is at least three inches in height and four inches in width. The name badge shall contain:
 - a. The name of the organization conducting the solicitation, if applicable;
 - b. The organization's address;
 - c. The name of the individual solicitor in bold letters; and
 - d. The words "Authorized Representative."
- B.** A solicitor shall not:
1. Conduct any type of solicitation on Department property without the express written permission of the Director as provided under this Article;
 2. Perform any activity not specifically authorized by the permit;
 3. Collect monetary contributions of any kind, whether for charitable purposes or not;
 4. Offer goods or services for sale, or engage in any other activity involving the exchange of money for a product or service;
 5. Engage in any solicitation activity outside of the solicitation area;
 6. Use profane or offensive language or engage in any unreasonably aggressive behavior, including but not limited to:
 - a. Following or continuing to solicit a person after that person has given a negative response to the solicitation;
 - b. Intimidating, verbally harassing, or shouting at a customer or employee of the Department; or
 - c. Preventing or interrupting the flow of customer traffic to or from a building located on Department property.
 7. Use any audio amplification device to attract the public, unless the device is assistive technology relating to a disability;
 8. Use any Department materials, supplies, equipment, or other resources to conduct a solicitation;
 9. Bring an animal, other than an animal guide or service animal, into the solicitation area;
 10. Leave garbage, litter, trash, human or animal waste, or any other kind of waste on Department property unless the waste is deposited in a container the Department maintains for that kind of waste; or
 11. Conduct a solicitation on Department property in violation of a permit limitation provided under R17-1-605.

R17-1-608. Signage Requirements

- A.** A solicitor approved for conducting a solicitation at any Department location shall provide, and prominently display beside each solicitation table, a sign that is clearly visible to the public.
1. The sign shall:
 - a. Be at least 22" wide and 28" high;
 - b. Be printed in black ink on plain white poster board, and
 - c. Include the following language using a minimum of one inch letters in Times New Roman font: "(Name of company or organization represented) is a private organization. Its representatives are not affiliated with, nor are they employees of, the state of Arizona or the Arizona Department of Transportation."
 2. The sign for a solicitor providing voter registration services shall include the following additional language using a minimum of one inch letters in Times New Roman font: "The Motor Vehicle Division provides voter registration services inside all Customer Service offices and on the internet at www.ServiceArizona.com."
- B.** The sign required by the Department under subsection (A) shall contain no additions or modifications.

R17-1-609. Removal; Revocation; Appeal; Hearing

- A.** The Department reserves the right at all times to immediately remove, or cause to be removed, any and all items of a solicitation that may damage state property, inhibit building access or egress, or pose safety issues. The Department also reserves the right to immediately remove, or cause to be removed, any and all solicitors who are found to be damaging state property, inhibiting building access or egress, or posing safety issues.

- B.** The Director may revoke a permit and ask a solicitor to leave the premises if the Director determines that:
1. The solicitor's permit application contained a false or misleading statement or a material omission, or
 2. The solicitor or solicitation failed to comply with a provision of this Article or any other applicable rule or statute.
- C.** If the Director revokes a solicitation permit, the Department shall send written notification of the Director's decision to the mailing address listed on the solicitor's permit application, within three business days of revoking the permit. The written notification shall state:
1. The Department's reason for the revocation, citing all applicable supporting statutes or rules;
 2. The solicitor's right to request a hearing to appeal the Department's action under A.R.S. Title 41, Chapter 6, Article 6, and Article 5 of this Chapter; and
 3. The time-frame for requesting a hearing with the Department's Executive Hearing Office as prescribed under Article 5 of this Chapter.
- D.** The scope of a hearing shall be limited to a determination of whether the Department possessed grounds to revoke the solicitor's permit under subsection (B).

R17-1-610. Assumption of the Risk

- A.** The state of Arizona and its agencies, officers, and employees shall not be responsible or liable for any loss or damage that may be suffered as a result of a negligent or intentional act, omission, or other misconduct on the part of the solicitor, or any other person acting on behalf of the solicitor, while conducting a solicitation under this Article.
- B.** All solicitation activities conducted on Department property are undertaken at the sole risk of the solicitor. The solicitor shall be fully and exclusively liable for all claims as described under subsection (A) and for any cleanup and damage repair costs incurred by the Department as a result of the solicitor's use of Department property.